

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 9372 OF 2005 .

Crompton Greaves Ltd. V/s. Noor Mohamad Ibrahim Shaikh Kumbhar Ali & ors.	... Petitioner. ... Respondents.
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Shri K.M. Naik with Shri Sujeet Salkar for the petitioner for the petitioner.

Shri Arshad Shaikh with V.M. Parkar for the respondents.

CORAM : V.C.DAGA, J.

DATED : 20.4.2006.

P.C. :

1. This petition is directed basically against two orders; one passed by the Industrial Court, Thane; dated 28.11.2005 in Revision Application (ULP) No. 8 of 2000; whereby revision application came to be dismissed and the order of the Labour Court dated 18.12.1999 passed in Complaint (ULP) No. 389 of 1999 came to be confirmed, whereunder the respondents were directed to allow the complainant to resume his duties and provide him work every month regularly till final disposal of the complaint.

2. The respondents were alternatively permitted to pay 90% wages till final disposal of the complaint, if they do not want respondent to attend their establishment.

3. The second order challenged is the conditional order dated 20.12.2005 passed by the Labour Court, directing the respondent-petitioner-employer to comply with the order directing deposit of 90% of the wages to the complainant with the Court w.e.f. 18.12.1999, failing which the defence of the respondents was to be treated as struck off. Since the petitioner did not comply with the condition of the second order, it operated; being a self-operative order.

The Facts:

4. The factual matrix, according to the petitioner is, that the petitioner is a Company engaged in the business of manufacture and assembling of electrical fans and other electric equipments.

. The respondent No.1 was working in the said company as a Job Inspector.

5. On 14.7.1997, at the end of first shift in which respondent No.1 was working, while he was going out of the premises, the security personnel, at the main gate, while checking outgoing workmen, found that the respondent No.1 was in possession of

a hand bag containing a polythene bag wrapped in news paper containing "red-oxide" weighing approximately 1.1. kg. According to the petitioner, regular panchanama was drawn and thereafter, charge sheet came to be issued alleging misconduct of theft against respondent No.1. He was immediately placed under suspension pending enquiry.

According to the petitioner, respondent No.1 vide letter dated 24.7.1997 admitted his misconduct.

6. According to the petitioner-company, they conducted full-fledged enquiry into charges levelled against the respondent No.1 with a view to give opportunity to the respondent No.1 to put his defence.

7. According to the petitioner-company, after due enquiry, following principles of natural justice, the Enquiry Officer submitted his report dated 17.11.1997, holding that respondent No.1 was guilty of misconduct levelled against him vide charge-sheet dated 15.7.1997.

8. According to the petitioner, respondent No.1 was given an opportunity to furnish his explanation on the findings of the enquiry officer, which he did submit on 22.1.1997. Since the said explanation was not found satisfactory, the petitioner was served

with second show cause notice, dated 19.3.1998, calling upon him to show cause as to why the said findings and report submitted by the Enquiry Officer should not be accepted by the petitioner -company. The said letter-show cause notice was replied by the respondent No.1 by his letter dated 27.3.1998, which was also found not satisfactory by the petitioner-employer. Ultimately, respondent No.1 came to be dismissed from service by an order dated 13.6.1998.

9. Being aggrieved by the aforesaid order dated 13.6.1998, respondent No.1 filed Complaint (ULP) No. 389./1998 in the Labour Court under items 1 (a)(b) (d) and (f) of Schedule IV of the MRTU & PULP Act, alleging unfair labour practices against the petitioner-company Respondent No.1 also filed an application for interim relief along with the said complaint.

10. On being noticed, petitioner-company appeared before the Labour Court and strongly opposed the said application for interim relief. The Labour Court vide order dated 18.12.1999, was pleased to allow application for interim relief and directed the petitioner-Company to allow respondent No.1 to resume his duties as indicated in the opening part of this order.

11. Being aggrieved by the aforesaid order of the Labour Court dated 18.12.1999, the revision bearing Revision Application (ULP) No.8/2000 was preferred before the Industrial Court, Thane, which came to be dismissed vide order dated 20.12.2005. The petitioner-Company was directed to allow the respondent No.1 to resume duties with alternate direction to deposit 90% wages of the complainant till final disposal.

. The petitioner-Company has filed this petition under Articles 226 & 227 of the Constitution of India to assail the above order of the Court below.

Submissions:

12. Learned Counsel appearing for the petitioner-Company contends that it was obligatory on the part of the Labour Court to decide validity of disciplinary enquiry as per judgment of the learned Single Judge of this Court in the case of Solapur Janata Sahakari Bank Ltd. vs. Vilas Digambar Kamble 2002 III CLR 606. He further submits that theft is a serious charge as such, by interim relief no final relief could have been granted by the Court below. He placed reliance on

the judgment of this Court of **Anthea Aromatics P.Ltd vs. Association of Chemical Workers & ors. 2005 II CLR 173** in support of his submissions. He also relied upon judgment of this Court taking similar view in the case of **Lorcom (Protectives), Ltd. vs. Smt. Lata Dongare & anr. 1993- I LLN 564.**

Consideration:

13. Having heard rival parties and considering the second order dated 20.12.2005, first, it is not necessary to examine legality and validity thereof in this petition since this order is a revisable order. Alternate remedy by way of revision is available to the petitioner. In the result, petition, to the extent it challenges an order dated 20.12.2005 is not entertained, reserving the liberty in favour of the petitioner to resort to alternate remedy available to it.

14. Now, turning to the validity of the orders dated 18.12.1999 and 28.11.2005 passed by Courts below, it is not in dispute that prima facie, the Labour Court found that punishment of dismissal for the alleged misconduct of theft of red-oxide weighing 1.1 kg. was found to be shockingly disproportionate. The Labour Court relied upon two judgments of this Court (i) 1991 II CLR 476-Bombay

and (ii) 1991 I CLR 722-Bombay, in support of its view. This view is affirmed by the Industrial Court in revision.

15. It cannot be disputed that the punishment awarded for the proved conduct must be in proportion to the misconduct committed. If the punishment is disproportionate to the proved misconduct, then certainly, the Labour Court has a power to vary such punishment. Even if enquiry is held to be legal and proper and findings recorded therein are held to be not perverse; still question of quantum of punishment is well within the jurisdiction of the Labour Court. It can always be considered by that Court.

16. Now, the questions are: (1) Can such consideration be extended at the interim stage that too, without considering fairness of the enquiry conducted against the workman and (2) Whether the impugned orders are perverse warranting interference of the writ Court.

17. The MRTU & PULP Act, 1971 specifically gives powers to the Court while trying complaint to direct withdrawal of unfair labour practice by an interim order. It is no doubt true that such power is required to be exercised sparingly in a deserving

cases of injustice. Viewed from this angle and turning to the facts of the present case, to consider the aforesaid questions, I am proceeding on the presumption that the enquiry is fair and proper and findings recorded therein are not perverse, still the question of punishment on prima facie material can always be considered by the Labour Court if it is shockingly disproportionate.

18. Taking judicial note of the value of the red-oxide, costs of which will hardly be Rs.15/- to Rs.20/- per kg.in the open market, if entire episode alleging misconduct of theft is considered, in my opinion, the view taken by the Courts below is a reasonable and possible view. If the Courts below formed an opinion that the bread of the earning member of the family cannot be allowed to be taken away by the employer for the alleged theft of red-oxide of which market value is negligible, no fault can be found with the view taken.

19. The Courts below relied upon following judgments:

. (1) 1991 II CLR 476-Bombay: In this case, for the theft of insignificant articles, viz. half broken brass bush and four small pieces of brass punishment of dismissal was inflicted. The Court

held that for the misconduct committed by the petitioner he could not have been saddled with extreme penalty in the nature of economic death by removing him from service.

. (2) 1991 1 CLR 722 Bombay: In this case, petitioners were guilty of theft of two pieces of rexin cloth measuring 10" x1" and 33" x21". Employer dismissed him. Labour Court and Industrial Court refused to interfere. Question was whether punishment is severe and disproportionate. The Court held that it is a fit case where the order of dismissal cannot be sustained.

. Considered in the above backdrop, it is not possible to hold that the view taken by the Courts below is a perverse view. The petition is liable to be dismissed.

20. In the result, petition is dismissed in limine with no order as to costs.

(V.C.DAGA,J.)